

Article - Courts and Judicial Proceedings

§3-2A-06A.

(a) At any time before the hearing of a claim with the Health Care Alternative Dispute Resolution Office, the parties may agree mutually to waive arbitration of the claim, and the provisions of this section then shall govern all further proceedings on the claim.

(b) (1) The claimant shall file with the Director a written election to waive arbitration which must be signed by all parties or their attorneys of record in the arbitration proceeding.

(2) After filing, the written election shall be mutually binding upon all parties.

(c) (1) Within 60 days after filing the election to waive arbitration, the plaintiff shall file a complaint and a copy of the election to waive arbitration with the circuit court or United States District Court.

(2) After filing the complaint, the plaintiff shall serve a summons and a copy of the complaint upon the attorney of record for all parties in the health claims arbitration proceeding.

(3) Failure to file a complaint within 60 days of filing the election to waive arbitration may constitute grounds for dismissal of the complaint upon motion by an adverse party and upon a finding of prejudice to that party due to the delay in the filing of the complaint.

(d) After filing the election to waive arbitration, the plaintiff may not join an additional health care provider as a defendant in any action brought under subsection (c) of this section unless a written election to waive arbitration has been filed by that health care provider under subsection (b) of this section.

(e) In any case subject to this section, the procedures of § 3-2A-06(f) of this subtitle shall apply.

(f) (1) If the parties mutually agree to a neutral case evaluation, the circuit court or United States District Court, to which the case has been transferred after the waiver of arbitration, may refer the case to the Health Care Alternative Dispute Resolution Office not later than 6 months after a complaint is filed under subsection (c) of this section.

(2) (i) On receipt of the case, the Director shall send to the parties a list of six attorneys who:

1. Meet the qualifications listed in § 3-2A-03(c)(3) of this subtitle; and

2. Have tried at least three health care malpractice cases.

(ii) Each party may strike two names from the list.

(iii) If the claim is against more than one health care provider, whether directly by a claimant or as a result of a third-party claim, the health care providers claimed against shall be treated as a single party and shall exercise their strikes jointly.

(iv) If there is more than one claimant, the claimants shall be treated as a single party and shall exercise their strikes jointly.

(v) If multiple claimants or multiple health care providers fail to agree on their strikes or fail to return their strike list to the Director within the time specified in paragraph (vi) of this subsection, the Director shall make the strikes on their behalf.

(vi) The strikes shall be submitted to the Director within 10 days after delivery of the list.

(vii) The Director shall appoint an evaluator from the unstricken names on the list.

(3) Upon appointment, the evaluator shall schedule a neutral case evaluation session to be held within 45 days after the appointment to pursue the neutral case evaluation of the claim or to resolve any issues to which the parties agree to stipulate before trial.

(4) Within 10 days after the neutral case evaluation session, the evaluator shall notify, in writing, the Director and the circuit court or United States District Court of the results of the neutral case evaluation.

(5) (i) During the neutral case evaluation period, the circuit court or United States District Court shall continue to have jurisdiction to rule on any motions or discovery matters.

(ii) The neutral case evaluation may not interfere with the scheduled trial.

(6) (i) The evaluator shall be paid in accordance with § 3-2A-03(d) of this subtitle.

(ii) Unless otherwise agreed by the parties, the cost of neutral case evaluation, which may not exceed \$300 per case, shall be divided equally between the parties.

(g) The provisions of this section apply only if no party waives arbitration of the claim under the provisions of § 3-2A-06B of this subtitle.